

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW THOMAS UPTON,

No. C 06-7854 WHA (PR)

Petitioner,

**ORDER TO SHOW CAUSE**

v.

KNOWES, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at Kern Valley State Prison, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

Venue is proper because the conviction was obtained in Santa Clara County, which is in this district. *See* 28 U.S.C. § 2241(d).

**STATEMENT**

A jury convicted petitioner of four counts of lewd and lascivious acts with a child. He was sentenced to six years in prison. His conviction was affirmed on direct appeal by the California Court of Appeal, and he did not petition the California Supreme Court for review. He contends he has exhausted the issues raised here by way of state habeas petitions.

**DISCUSSION**

*A. Standard of Review*

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in

1 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose*  
2 *v. Hodges*, 423 U.S. 19, 21 (1975).

3 A district court shall "award the writ or issue an order directing the respondent to show  
4 cause why the writ should not be granted, unless it appears from the application that the  
5 applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Summary dismissal is  
6 appropriate only where the allegations in the petition are vague or conclusory, palpably  
7 incredible, or patently frivolous or false. *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir.  
8 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

9 *B. Legal Claims*

10 As grounds for federal habeas relief, petitioner asserts that: (1) his counsel was  
11 ineffective in failing to call a computer forensics expert; and (2) his counsel was ineffective and  
12 his right against self-incrimination violated when counsel coerced him into testifying regarding  
13 technical computer matters about which he was not qualified. These claims are sufficient to  
14 require a response.

15 **CONCLUSION**

16 1. The clerk shall mail a copy of this order and the petition with all attachments to the  
17 respondent and the respondent's attorney, the Attorney General of the State of California. The  
18 clerk shall also serve a copy of this order on the petitioner.

19 2. Respondent shall file with the court and serve on petitioner, within sixty days of  
20 service of this order, an answer conforming in all respects to Rule 5 of the Rules Governing  
21 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.  
22 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state  
23 trial record that have been transcribed previously and that are relevant to a determination of the  
24 issues presented by the petition.

25 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the  
26 court and serving it on respondent within thirty days of service of the answer.


27 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,  
28 as set forth in Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a

1 motion, petitioner shall file with the court and serve on respondent an opposition or statement of  
2 non-opposition within thirty days of receipt of the motion, and respondent shall file with the  
3 court and serve on petitioner a reply within 15 days of receipt of any opposition.

4 4. Petitioner is reminded that all communications with the court must be served on  
5 respondent by mailing a copy of the document to respondent's counsel. Papers intended to be  
6 filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also  
7 must keep the court informed of any change of address by filing a separate paper with the clerk  
8 headed "Notice of Change of Address," and comply with any orders of the court within the time  
9 allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this  
10 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez*  
11 *v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

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13 **IT IS SO ORDERED.**

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15 Dated: January 4, 2007.

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18 WILLIAM ALSUP  
19 UNITED STATES DISTRICT JUDGE  
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